

JS 44 (Rev. 02/19)

JFL CIVIL COVER SHEET

5:19-cv-5688

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Please see attached

DEFENDANTS

19 5688
Lehigh Cement Company LLC and Lehigh White Cement Company, LLC

County of Residence of First Listed Defendant Lehigh (a facility in Berks)
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

Please see attached

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State: | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SPTS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)
 Clean Air Act, 42 U.S.C. 7401 et seq.

Brief description of cause:
 Governmental environmental enforcement action under the Clean Air Act related to cement facilities

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint
 JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE Not applicable

DOCKET NUMBER

DEC - 3 2019

DATE

12/02/2019

SIGNATURE OF ATTORNEY OF RECORD

Catherine Connerice Ruffo

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

ATTACHMENT TO CIVIL COVER SHEET

List of counsel in *United States, et al. v. Lehigh Cement Company LLC and Lehigh White*

Cement Company, LLC. (E.D. of Pa.):

For the United States:

Catherine Banerjee Rojko, Esq.
Andrew Ingersoll, Esq.
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: 202-514-5315
Telephone: 202-514-1999
Facsimile: 202-514-0097
Cathy.Rojko@usdoj.gov
Andrew.Ingersoll@usdoj.gov

For the State of Indiana:

Benjamin Jones, Esq.
Zachary Price, Esq.
Office of the Indiana Attorney General
Indiana Government Center South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6247
Facsimile: (317) 232-7979
Zachary.Price@atg.in.gov
Benjamin.Jones@atg.in.gov

For the State of Iowa:

David S. Steward, Esq.
Iowa Department of Justice
Hoover State Office Bldg.
1305 E. Walnut St., 2nd Floor
Des Moines, IA 50319
Telephone: (515) 281-7242
Facsimile: (515) 281-6771
David.Steward@ag.iowa.gov

For the State of Maryland:

Roberta R. James, Esq.
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Blvd., Suite 6048
Baltimore, MD 21230
Telephone (410) 537-3748
Facsimile: (410) 537-3943
roberta.james@maryland.gov

For the State of New York:

Michael J. Myers, Esq.
Senior Counsel
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
Telephone: (518) 776-2382
Facsimile: (518) 650-9363
michael.myers@ag.ny.gov

For the Pennsylvania Department of Environmental Protection:

Alicia R. Duke, Esq.
Office of Chief Counsel
Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110
Telephone: (717) 783-0366
Facsimile: (717) 772-2400
alduke@pa.gov

For the Jefferson County Board of Health:

David S. Maxey, Esq.
Wade C. Merritt, Esq.
SPAIN & GILLON, LLC
505 20th Street North
Suite 1200
Birmingham, AL 35203
Telephone: (205) 581-6266
Facsimile: (205) 324-8866
DSM@Spain-Gillon.com
WCM@Spain-Gillon.com

For the Bay Area Air Quality Management District:

Adan Schwartz
Senior Assistant Legal Counsel
375 Beale Street, Suite 600
San Francisco, CA 94105-2001
Telephone: (415) 749-5077
Facsimile: (415) 749-5103
aschwartz@baaqmd.gov

For Lehigh Cement Company LLC:

Gina Zawitoski, Esq.
DLA Piper LLP (US)
6225 Smith Avenue
Baltimore, MD 21209
Telephone: (410) 580-4291
Facsimile: (410) 580-3291
gina.zawitoski@dlapiper.com

For Lehigh White Cement Company, LLC:

R. Todd Silliman, Esq.
Dentons US LLP
303 Peachtree Street, NE
Suite 5300
Atlanta, GA 30308
Telephone: (404) 527-4914
Facsimile: (404) 527-4198
todd.silliman@dentons.com

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

19 5688

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: United States of America - ENRD/U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044

Address of Defendant: 537 Evansville Rd., Fleetwood, PA 19522 (Lehigh Cement Company facility)

Place of Accident, Incident or Transaction: Fleetwood, PA

RELATED CASE, IF ANY:

Case Number: Not Applicable

Judge: _____

Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions.

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court?
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 12/02/2019

Catherine Banerjee Rojko
Must sign here

Attorney-at-Law / Pro Se Plaintiff

415927 (DC)

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | 1. Indemnity Contract, Marine Contract, and All Other Contracts |
| <input type="checkbox"/> | 2. FELA |
| <input type="checkbox"/> | 3. Jones Act-Personal Injury |
| <input type="checkbox"/> | 4. Antitrust |
| <input type="checkbox"/> | 5. Patent |
| <input type="checkbox"/> | 6. Labor-Management Relations |
| <input type="checkbox"/> | 7. Civil Rights |
| <input type="checkbox"/> | 8. Habeas Corpus |
| <input type="checkbox"/> | 9. Securities Act(s) Cases |
| <input type="checkbox"/> | 10. Social Security Review Cases |
| <input checked="" type="checkbox"/> | 11. All other Federal Question Cases |
- (Please specify) Environmental (Clean Air Act)

B. Diversity Jurisdiction Cases:

- | | |
|--------------------------|---|
| <input type="checkbox"/> | 1. Insurance Contract and Other Contracts |
| <input type="checkbox"/> | 2. Airplane Personal Injury |
| <input type="checkbox"/> | 3. Assault, Defamation |
| <input type="checkbox"/> | 4. Marine Personal Injury |
| <input type="checkbox"/> | 5. Motor Vehicle Personal Injury |
| <input type="checkbox"/> | 6. Other Personal Injury (Please specify) _____ |
| <input type="checkbox"/> | 7. Products Liability |
| <input type="checkbox"/> | 8. Products Liability - Asbestos |
| <input type="checkbox"/> | 9. All other Diversity Cases |
- (Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Catherine Banerjee Rojko, counsel of record or pro se plaintiff, do hereby certify

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE 12/02/2019

Catherine Banerjee Rojko

Sign here if applicable

Attorney-at-Law / Pro Se Plaintiff

DEC - 3 2019

415927 (DC)

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

JFLUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIAUNITED STATES OF AMERICA, STATE OF)
INDIANA, STATE OF IOWA, STATE OF)
MARYLAND, STATE OF NEW YORK,)
PENNSYLVANIA DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
JEFFERSON COUNTY BOARD OF HEALTH,)
and BAY AREA AIR QUALITY MANAGEMENT)
DISTRICT,)

Plaintiffs,)

v.)

LEHIGH CEMENT COMPANY LLC, and)
LEHIGH WHITE CEMENT COMPANY, LLC,)

Defendants.)

19 5688

Civil Action No.

CASE MANAGEMENT TRACK DESIGNATION FORM

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus — Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security — Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration — Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos — Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management — Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management — Cases that do not fall into any one of the other tracks. (x)

December 3, 2019 Catherine Banerjee Rojko Attorney for the United States

202-514-5315
Phone202-514-0097
FAXCathy.Rojko@usdoj.gov
Email Address**DEC - 3 2019**

**Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division

Catherine Banerjee Rojko

CATHERINE BANERJEE ROJKO
Senior Counsel
ANDREW INGERSOLL
Trial Attorney
Environmental Enforcement Section

Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 514-5315
Tel: (202) 514-1999
Fax: (202) 514-0097
E-mail: Cathy.Rojko@usdoj.gov
E-mail: Andrew.Ingersoll@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2019, the foregoing Case Management Track
Designation Form was sent by first class mail with postage prepaid to the following counsel:

Attorneys for Lehigh Cement Company LLC

Gina Zawitoski, Esq.
DLA Piper LLP (US)
6225 Smith Avenue
Baltimore, MD 21209
gina.zawitoski@dlapiper.com

Attorneys for Lehigh White Cement Company, LLC

R. Todd Silliman, Esq.
Dentons US LLP
303 Peachtree Street, NE
Suite 5300
Atlanta, GA 30308
todd.silliman@dentons.com

Attorneys for the State of Indiana

Benjamin Jones, Esq.
Zachary Price, Esq.
Office of the Indiana Attorney General
Indiana Government Center South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204
bjones@atg.in.gov

Attorneys for the State of Iowa

David S. Steward, Esq.
Iowa Department of Justice
Hoover State Office Bldg.
1305 E. Walnut St., 2nd Floor
Des Moines, IA 50319
David.Steward@ag.iowa.gov

Attorneys for the State of Maryland

Roberta R. James, Esq.
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230
roberta.james@maryland.gov

Attorneys for the State of New York

Michael J. Myers, Esq.
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
michael.myers@ag.ny.gov

Attorneys for the Pennsylvania Department of Environmental Protection

Alicia R. Duke, Esq.
Office of Chief Counsel
Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110
alduke@pa.gov

Attorneys for the Jefferson County Board of Health

David S. Maxey, Esq.
Wade C. Merritt, Esq.
SPAIN & GILLON, LLC
505 20th Street North
Suite 1200
Birmingham, AL 35203
DSM@Spain-Gillon.com
WCM@Spain-Gillon.com

Attorneys for the Bay Area Air Quality Management District:

Adan Schwartz
Senior Assistant Legal Counsel
375 Beale Street, Suite 600
San Francisco, CA 94105-2001
aschwartz@baaqmd.gov

Catherine Banerjee Rojko
Catherine Banerjee Rojko